

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

SERENITY PLACE

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid holiday pay

Employer: Serenity Place, 101 Manchester Street, Manchester, NH 03101

Date of Hearing: February 24, 2016

Case No.: 52022

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on December 15, 2015. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on February 9, 2016.

The claimant testified that she filed the Wage Claim with the understanding that her first week of work was withheld. This did not prove to be true so the Wage Claim is just for the two holidays that she is claiming.

The claimant testified that she was a part time employee who worked an established schedule. She testified that she worked under the Employee Handbook. She started her employment in late September and was paid for the Veterans Day holiday. She was scheduled to work on the holiday and even though there was no work, she received the five hours of holiday pay.

The claimant further testified that she had hours scheduled for the two holidays, Thanksgiving and the day after Thanksgiving, she was not paid for these two days. When she inquired about the payment she was informed that she was not entitled to the holiday pay. The claimant testified that she was told that because she was a part time employee she was not eligible to receive holiday pay.

The employer testified that the agency had made a mistake in the payout of wages for the Veterans Day holiday. This was a payroll mistake and the employer did not seek to get the over payment back. The employer maintains that they followed the procedures outlined in the Employee Handbook and that there are no wages due.

FINDINGS OF FACT

RSA 275:43 I Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:43 V Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law places an issue such as holidays into the category of wages when the pay for the holiday is due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and she did not meet this burden.

The claimant admitted that she worked under the employee handbook and that it was known to her. The claimant also admitted that her perception was that because she had been paid for the first holiday after she was employed, she felt all other holidays would be paid.

The employer was credible in their testimony that the holidays were not part of the claimant's wage schedule and that the holiday that was paid, was paid in error.

A review of the Employer Handbook shows that on page 30, it is clear that part time employees are not eligible for other benefit programs. Holidays are part of the "other benefit programs".

It is also clear that on page 33 of the handbook, it states that holidays are available to "full time" employees.

The claimant was a part time employee and was not eligible for holiday pay. The one time she was paid was in error and outside of the written policies and procedures. The wages earned have been paid in full.

The Wage Claim is invalid.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds the claimant failed to

prove by a preponderance of the evidence that she was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: March 11, 2016

Original: Claimant
cc: Employer

TFH/aph